IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5511 of 1987

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT BIDI TAMAKU AND TIMRUPAN MERCHANTS ASSOCIATION
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 5511 of 1987
MR SK JHAVERI for Petitioners No. 1-2
MR AJ DESAI AGP for Respondent No. 1
MR SN THAKKAR for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE D.A.MEHTA

Date of decision:13/02/2002

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. This Petition, under Article 226 of the Constitution of India, has been filed on behalf of the members of the Gujarat Bidi Tamaku and Timrupan Merchants Association and Shree Nathjee Trading Company, whereby regulatory provisions and restraint imposed on import of timru leaves to the State of Gujarat from other States, under the provisions of the Gujarat Minor Forest Produce Trade Nationalisation Act, 1979 and the Gujarat Minor Forest Produce Trade Nationalisation Rules, 1979 (hereinafter referred to as `the Act' and `the Rules' respectively), have been challenged.

#. The cause of action for challenging the action of the respondent No. 1 - The State of Gujarat and respondent No.2 - The Gujarat State Forest Development Corporation Limited (hereinafter referred to as `the Corporation') is said to have arisen, when various quantities of timru leaves imported by various traders as members of the petitioner-association (as shown in Schedule Exh.A.) were not allowed to be transported to Gujarat by the respondent-Corporation by refusing to issue permits in the prescribed form under the Rules. The petitioner-association is also aggrieved by the policy decision taken by the Corporation, which is notified by a public notice, published in the newspaper dated 15-07-1987, informing all concerned dealing in timru leaves that import of timru leaves to the Gujarat State from outside without grant of permission by the Corporation would be illegal.

#. The principal submission advanced by the learned counsel Shri S.K. Zaveri for the petitioner-association is that the provisions of the Act and the Rules nowhere restrict import of timru leaves from outside the State to the State of Gujarat for sale or consumption. In the alternative, it is submitted that if the provisions of the Act and the Rules are construed to hold that there is a restraint on import of timru leaves to the State of Gujarat, such restriction is unreasonable, as being an encroachment on fundamental rights of the members of the petitioner-association under Article 19(1)(g) of the Constitution, and also an unreasonable restriction on the freedom of Inter-State trade and commerce in violation of Articles 301 to 304 of the Constitution of India.

#. On the above alternative submission, based on the alleged constitutional invalidity of the provision of

restraining the import of timru leaves, the Petition has been amended to raise specific grounds and seeking issuance of a writ for striking down the impugned provisions of the Act and the Rules in relation to the restrictions imposed on import.

#. Examination of the relevant provisions of the Act and the Rules is necessary for considering the challenge made to the provisions of the Act and the interpretation placed on behalf of the petitioners on its various provisions.

#. The Act (being the Act No. 7 of 1979) had received assent of the President on 2-3-1979. The Statement of Objects and Reasons for the Act state:

> "In order to eliminate exploitation of the tribal who collect timru leaves and mhowra and other minor forest produce from the areas in the State by private trade, and for development of minor forest wealth of the State, it was considered necessary to nationalise trade in the minor forest produce."

#. In accordance with Section 1, the Act came into force from 28th November, 1978. Section 2 contains the definition clauses. Under subsection (1) of Section 2 "agent" has been defined to be one appointed under Section 6. In accordance with subsection (3) of Section 6, the Corporation can also be appointed by the State Government, as its agent, for the purpose of selling, purchasing or transporting any minor forest produce.

#. A copy of the order, published in the Gujarat Government Gazette Extraordinary dated 13-12-1978, has been shown to us, whereby in exercise of powers under Section 6 of the Act, the Government has appointed Gujarat State Forest Development Corporation Limited (respondent No.2 herein) as an agent of the State Government, for the purpose of selling, purchasing or transporting minor forest produce, timru leaves, mhowra flowers, mhowra fruits, seeds and doli.

#. Subsection (8) of Section defines the word "import" to mean `to bring into the State from outside the Sate otherwise than across a customs frontier'. "Minor forest produce" defined in subsection (9) of Section 2 includes timru leaves, mhowra flowers, mhowra fruits, seeds and doli. The State Government is empowered, by Notification in the Official Gazette, to declare any

other class of forest produce as minor forest produce for the purpose of the Act. Section 3 creates complete monopoly in the State for sale, purchase or transport of minor forest produce. Section 3(1) for the present purpose deserves to be quoted:

"3.Restriction on sale, purchase or transport of minor forest produce.-(1) Notwithstanding anything contained in any law for the time being in force or in any settlement, grant, agreement, usage, custom, or any decree or order of a Court or any Tribunal or any document having the force of law, no person other than the State Government, an authorised officer or an agent shall sell, purchase or transport-

(i) with effect on and from the appointed day, any of the minor forest produces specified in sub-clauses (a), (b) and (c) clause (9) of section 2, and

(ii) with effect on and from the date of publication in the Official Gazette of a notification issued under sub-clause (d) of clause (9) of section 2, the minor forest produce declared as such under such notification."

##. Thus creating a monopoly under Section 3 in favour of the State and the Corporation, as agent, for selling, purchasing or transporting minor forest produce, under subsection (2) of Section 3, certain transactions of sale, transport and import have been permitted. Subsection (2) of Section 3 also deserves to be quoted:

3(2) Subject to the provisions of the Bombay Prohibition Act, 1949, (Bom. XXV of 1949), it shall be lawful for -

(a) any person to sell any minor forest produce to, or purchase any minor forest produce from, the State Government, authorised officer or an agent;

(b) a grower to transport any minor forest produce grown by him from any place in a unit where such produce has been grown to a purchasing centre or depot set up in that unit under Section 8 or to any other place in that unit;

(c)(i) any person who has purchased any minor forest produce from the State

Government, or an authorised officer or an agent, and,

(ii) any person who has purchased any minor forest produce from another person under clause (e),

to transport the same, in accordance with the terms and conditions specified in a permit issued by such authority and in such manner as may be prescribed, for the purpose of being used in the manufacture of finished goods within the State or for the purpose of sale outside the State, or for the purpose of re-sale to the State Government, an authorised officer or an agent;

(d) any person to import any minor forest produce or to transport the minor forest produce so imported, in accordance with the terms and conditions of a permit issued by such authority and in such manner as may be prescribed; and

(e)(i) any person, who has purchased any minor forest produce from the State Government or authorised officer, or an agent to sell such of the minor forest produce, as may be specified by the State Government by general or special order published in the Official Gazette, to any other person; and

(ii) other person to whom the minor forest produce is so offered for purchase to purchase the same.

in accordance with the terms and conditions specified in a permit issued to the seller for the purpose of sale and to the purchaser for the purpose of purchase, by such authority and in such manner as may be prescribed.

Explanation.- For the purpose of this section, a transfer of a right to collect any minor forest produce or an exchange of minor forest produce for some other thing shall be deemed to be a sale, and an acquisition of right to collect any minor forest produce or an exchange of any thing for some minor forest produce shall be deemed to be a purchase."

##. The provisions of subsection (2) of Section 3, particularly clause (d), make it clear that import of minor forest produce is permitted in accordance with the terms and conditions of a permit to be issued by competent authority in the manner prescribed.

##. Section 4 confers on the State Government in consultation with the advisory committee constituted under subsection (1) of Section 7 the power to fix the price of minor forest produce for sale and purchase. For the purpose of sale and purchase of minor forest produce, the State Government may constitute units, and in accordance with Section 8, set up purchasing centres and depots. Under Section 9, the State Government or the authorised officer or agent is bound to purchase the minor forest produce at the price fixed under Section 4 and offered for sale.

##. The last and relevant provision is Section 20(2)(a), which is a Rule making power of the State Government, authorising it to frame Rules amongst others in the matter of laying down the procedure, for issuance of permits for import and transport of minor forest produce.

##. The State Government has framed The Gujarat Minor Forest Produce Trade Nationalisation Rules, 1979. Rule 3 contains the requirement of obtaining permit for the purpose of import and transport of timru leaves and requires an application to be made for issuance of such permit in prescribed Form B. The said Rule 3 of the Rules being relevant is quoted hereunder:

> "Permits.-The permit for the purposes of clauses (c) and (d) of sub-section (2) of section 3 of the Gujarat Minor Forest Produce Trade Nationalisation Act, 1979 shall be in Form `A' and shall be issued by the Deputy Conservator of Forests or an Officer authorised by Deputy Conservator of Forests or Project Manager or an Officer authorised by the Project Manager in writing in this behalf. An application for issue of the permit shall be made in Form `B' and shall be submitted to the Deputy Conservator of Forest or the Officer authorised by Deputy Conservator of Forests or Project Manager or an Officer authorised by the Project Manager, who may after due enquiry grant permit and arrange for its issue. (underlining for emphasis).

##. Form `B' contains the various particulars to be furnished by the applicant for grant of permit, which include among other details, quantity of minor forest produce collected or produced, name of forest from where it is produced and destination to which the minor

forest produce is to be transported, etc. Form `A' is regarding transport permit which should also contain necessary details of minor forest produce such as the destination where the leaves would be carried, the period of validity of the permit and the route and the vehicle used for transport.

##. Learned counsel appearing for the petitioner, by relying on the provisions contained in Section 3(2)(d) (quoted above) read with Rule 3 and Forms `A' and `B' prescribed thereunder, submits that there there is a lawful import of timru leaves and the provisions of the Act and the Rules make it obligatory for the State and its Officers or agents to issue transport permits. It is argued that refusal to issue transport permits for importing timru leaves to the members of the petitioner-association is an act clearly in violation of the above mentioned provisions of the Act and the Rules.

##. We have also heard learned counsel Shri A.J. Desai appearing for the State who supported the action of the respondents of refusing to issue permits at the relevant time on the ground that there was sufficient stock of leaves in the godowns of the Corporation at various units and import of timru leaves from outside the State would have affected the trade in minor forest produce, which is monopolised, solely to benefit the tribals associated with the said trade and to save them from exploitation.

##. After examining the relevant provisions of the Act and the Rules in the light of its objects and reasons, we cannot accept the contention raised on behalf of the petitioners that, as and when permission for import and transport is sought by the traders, it is incumbent upon the Authorities of the State and its agents to grant such permits, and withholding of it would be contrary to the provisions of the Act the Rules. In our opinion, the provision empowering issuance of permit for import and transport implies in it the power to refuse such permit - not on arbitrary, but on reasonable and cogent grounds relevant to the advancement of the object of the Act. Rule 3, particularly the portion underlined by us above, clearly gives an indication that the Forest Officer, after due enquiry, may grant permit or refuse permit. The expression used in Rule 3 is "who may after due enquiry grant permit and arrange for its issue". This enabling power also enables the Forest Officer to refuse to grant permit, where there are reasonable

grounds for such refusal, in the interest of trade in minor forest produce, which is allowed to be carried on for the benefit of the tribals and for preventing their exploitation.

##. In the present case, it is not necessary for us to go into the question, whether the respondent Authorities were justified in refusing to grant permit for transport of imported leaves. Because, that question has now become academic. During pendency of this Petition, interim relief was sought seeking directions for transport of imported leaves by the members of the petitioner-association, and such permission was granted by the Court by the following order made on 28-12-1987:

> "Mr. Bhatt, learned advocate appearing for the Corporation states on instructions from the Secretary of the respondent Corporation that as an exception, the respondent Corporation will permit the members of the petitioner-association to import into Gujarat, timru leaves which they have already purchased from other States. He further states that if it is found that there were genuine contracts for the purchase of Timru leaves, then the respondent Corporation will permit the members of the association to import those Timru leaves on this occasion only. Mr. Zaveri, learned advocate for the petitioners states that the members of the association will furnish all the required data so as to enable the Corporation to issue permits."

##. The Petition, therefore, on merits has been rendered infructuous, but as the question of law based on the provisions of the Act and the Constitution is one of importance in day-to-day trade of the members of the petitioner-association, the learned counsel for the petitioners desired a decision on those questions. Learned counsel for the petitioner has also urged the alternative submission, questioning the constitutional validity of the provisions of Section 3(2)(d) read with Rule 3 of the Rules. On behalf of the petitioners, it is argued that if the provisions of the Act and Rule 3 are construed to hold that they allow the State and its Authorities under the Act and the Rules to withhold the issuance of permit for transport of timru leaves, the provisions would suffer from constitutional infirmity of being violative of Article 19(1)(g) and Articles 301 to 304 of the Constitution. Reliance is placed on the

decision of Supreme Court in the case of State of Mysore V. H. Sanjeeviah reported in AIR 1967 SC 1189. On the same aspect, learned counsel also submitted that the State Legislature of Gujarat has no power to legislate in respect of minor forest produce grown outside the State and any restraint on such forest produce within the State is constitutionally impermissible. The other submission on the same aspect advanced is that law imposing reasonable restriction on freedom of Inter-State trade and commerce in accordance with Article 304(b) of the Constitution is saved only if the Bill for making such a law has been introduced in the Legislature of the State with a previous sanction of the President as required by proviso below Article 304(b) of the Constitution.

##. We have examined the relevant provisions of the Act and we find absolutely no force in any of the contentions advanced on behalf of the petitioners on the constitutional validity of the provisions of the Act and the Rules. We have examined the relevant provisions of the Act and the Rules. The legislation under consideration nationalises trade in minor forest produce in favour of the State and its agents for the benefit of tribals who are associated with such trade and to save them from exploitation. Article 19(1)(g) confers fundamental `right to practice any profession or to carry on any occupation, trade or business', but the said fundamental right is subject to clause (6) of the said Article, which in subclause (ii) enables the State to make a law for carrying on any trade exclusively by the State or by the Corporations owned or controlled by the State in general public interest. Such reasonable restriction on fundamental right under Article 19(1)(g) is permissible. The Act and the Rules create thus a monopoly of trade in the State and its agencies for the benefit of tribals, and therefore the Act cannot be challenged as violative of Article 19(1)(g) of the Act, and the same is saved by Article 19(6)(ii) of the Constitution.

##. So far as the constitutional infirmity shown under proviso to Article 304(b) of the Constitution is concerned, that the Bill of the Act before its introduction did not have previous sanction of the President, it is enough for us to refer to Article 255 of the Constitution. It says, that any Act or provisions of it, requiring previous sanction of the President, shall not be invalid by reason only that such sanction to the Act is obtained subsequent to its passing. It is not in dispute that the Act has

received the assent of the President before it is brought into force. Article 255 therefore saves the infirmity, if any, of not obtaining previous sanction to the moving of the Bill. Article 255 reads as under:

"255.Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.-No Act of Parliament or of the Legislature of a State, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given, -

(a) where the recommendation required was that of the Governor, either by the Governor or by the President;

(b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh, or by the President;

(c) where the recommendation or previous sanction required was that of the President, by the President."

(See also Jawaharmal v. The State of Rajasthan and others reported in AIR 1966 SC 764).

##. We have examined the relevant provisions of the Act and the Rules. The provision requiring permission for import and transport of Timru leaves is in the nature of regulatory provision and is not a complete prohibition on import and transport of leaves brought from outside within the State. As noticed above, the monopolisation of the trade in minor forest produce (timru leaves) is to give maximum benefit to the tribals and to save them from exploitation by private traders. It is also noticed that the sale and purchase is controlled by the State and its agencies. The price is also fixed by the State in consultation with the Advisory Committee. The provisions of the Act and the Rules do not completely prohibit import and issuance of transport permit for the purpose, but, there may be facts and situations warranting the State and its Authorities from prohibiting import altogether. For example, where there is enough stock of leaves in the godowns of the Corporation or the price variation of leaves grown in the State and outside the State is such that inflow of imported timru leaves might create an imbalance in the over all trade and business of timru leaves within the State. These are relevant considerations under which ban on import and withholding of grant of permit can be resorted to by the State and its Corporations. Such regulatory

provision, requiring grant or refusal of permit for import and transport, cannot be held to be a complete restraint on free trade between the States, but it is in the nature of a regulatory provision to be taken use of as and when the occasion demands for imposing total or partial ban. In a given case, the action of the Authorities may be challenged on the provisions of the Act that withholding of permission for import and transport is unreasonable or arbitrary, but that would be a challenge on the provisions of law and not on the provisions of the Constitution. We do not find any constitutional infirmity in the provisions of the Act and the Rules.

##. A similar challenge to total or partial prohibition on import and movement of essential articles by the State was negatived by Hon'ble Supreme Court in the case of State of Tamil Nadu vs. M/s.Hind Stone reported in AIR 1981 SUPREME COURT 711. In that case, Rule 8C of the Tamil Nadu Minor Mineral Concession Rules, 1959, empowering complete prohibition on exploitation of Black Granite by private agencies came up for consideration. On examination of the provisions of the said Act and the Rules, it was held that even provisions of imposing complete ban, in the context of the Legislation and in the facts and circumstances of the case is in the nature of regulatory measure. Such a ban even in a subordinate Legislation is `law' under Article 304(b) of the Constitution.

##. In the subsequent decision of the Hon'ble Supreme Court in the case of State of Tamil Nadu vs. M/s.Sangeetha Trading Co. reported in AIR 1993 SUPREME COURT 237, similar challenge was made to the provisions of clause (iii) of the Tamil Nadu Timber (Movement Control) Order, 1982, framed under the Tamil Nadu Essential Articles Control and Requisitioning Act, 1949. After considering all previous decisions of the Hon'ble Supreme Court, including in the case of State of Mysore vs. H.Sanjeeviah (AIR 1967 SC 1189, on which heavy reliance has been placed on behalf of the petitioner), prohibition on movement of Timber imposed by the Control Order was held to be only a regulatory measure and not an act in restraint of trade. In that case, the Hon'ble Supreme Court quoted with approval, the following observations of the Privy Council in Hughes and Vale Proprietary Ltd. v. State of New South Wales (1956) AC 241:

"Every case must be judged on its own facts and

in its own setting of time and circumstance, and it may be that in regard to some economic activities and at some stage of social development it might be maintained that prohibition with a view to State monopoly was the only practical and reasonable manner of regulation, and that inter-State trade, commerce and intercourse thus prohibited and thus monopolized remained absolutely free".

##. The decision of State of Mysore vs. H.Sanjeeviah (supra), on which heavy reliance was placed on behalf of the petitioners, is distinguishable, where not by any statutory Rule, but by a Notification issued on the administrative side, requirement was imposed of giving cash security and deposit for import and transport of timber. It is on that ground that it was held that the two provisos introduced by Notification to the Rules were not even in exercise of delegated authority and they do not become part of the Act. In that case, there was also no material placed by the State to justify the imposition of such a condition of cash deposit as a requirement in public interest. It is in these circumstances that the Notifications were held to be violative of Article 304(b) of the Constitution. That case is, therefore, clearly distinguishable.

##. The contention advanced that the timru leaves grown outside the State and imported into State of Gujarat cannot be subjected to legislation within the State of Gujarat is an argument only required to be mentioned and rejected. When the timru leaves grown outside the State are imported into the State of Gujarat, in the interest of monopoly trade in minor forest produce, the provisions in the Act and the Rules to regulate transport and sale of such imported leaves are well within the legislative competence of the Legislature of State of Gujarat.

In the result, the Petition fails and is hereby dismissed, but in the circumstances without any order as to costs. Rule is discharged.

(D.M. DHARMADHIKARI, C.J.)

(D.A. MEHTA, J.)

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